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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Art Unit: 1645
Svend BIRKELUND) Examiner: K. SHAHNAN-SH
Serial No.: 09/446,677) Washington, D.C.
Filed: March 24, 2000) July 11, 2001
For: SURFACE EXPOSED PROTEINS) Docket No.: BIRKELUND=1
FROM CHLAMYDIA...)

REQUEST TO VACATE
NOTICE OF NON-COMPLIANT AMENDMENT

Commissioner for Patents
Washington, D.C. 20231

S i r :

The response filed June 21, 2001 submitted substitute pages 36, 40 and 49 of the Sequence Listing.

It has been held noncompliant with 37 CFR § 1.121 because 1.121 does not provide for entry of substitute pages. The Examiner suggests submitting a complete paper copy of the specification.

Amended 37 CFR § 1.121, concerning amendments to the specification, does not apply to amendments to the sequence listing. 37 CFR § 1.825(a) still specifically provides that "any amendments to a paper copy of the 'Sequence Listing' (§ 1.821 (c)) must be made by the submission of substitute sheets."

37 CFR § 1.121(b) clearly yields to § 1.825(a) because it is entitled "specification other than the claims and listings provided for elsewhere ((§§ 1.96 and 1.825)" [emphasis added]. In other words § 1.121(b) does not apply to sequence listings at all. If the PTO maintains its position that 1.121 applies, it should issue a new notice explaining its position, and treat applicant's submission as bona fide, giving applicant one month

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from the date of the new notice to reply.

Respectfully submitted,

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